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Warr, R.

Rd. Oct. 1704



Library of the Divinity School.

FROM THE LIBRARY OF
THOMAS HILL, D.D.,

LATE PRESIDENT OF THE UNIVERSITY.

THE GIFT OF HIS CHILDREN.

4 January, 1892.

Rev Thomas Hill L.L.

6
7485

with the regards of

W. M. Buller.

ASHUR WARE.

1782--1873.

PROCEEDINGS

OF THE

United States District Court,—

FOR

MAINE DISTRICT,

Commemorating the Services and Character

OF

HON. ASHUR WARE,

LATE JUDGE OF SAID COURT.

RESOLUTIONS AND ADDRESSES OF MEMBERS OF
THE CUMBERLAND BAR, WITH THE
REPLY OF JUDGE FOX.

PORTLAND:
STEPHEN BERRY, PRINTER.

1873.

4 January, 1892.

From the [illegible]

[illegible]

The Character and Public Services of JUDGE ASHUR WARE.

The members of the Cumberland Bar Association met in the United States District Court room, at 3 o'clock on the 22d of September, 1873, agreeably to a previous notice, and Hon. Nathan Webb, the Vice President, in the absence of Judge Howard, the President, took the chair. M. M. Butler, Esq., on behalf of a committee appointed for that purpose at an earlier meeting, reported resolutions expressive of the sentiments of the Bar, in reference to Hon. Ashur Ware, for many years Judge of the United States District Court for Maine District, lately deceased, and the same were unanimously adopted.

At 3½ o'clock, the Court was announced, and Judge Fox took his place upon the bench. The Court having been opened, Hon. George F. Talbot arose and spoke as follows:

May it Please your Honor:

Since its last session, the eminent man whose personal virtues and judicial authority this Court must always honor, has laid aside the burdens and infirmities of a protracted old age, and peacefully passed on to test the mysteries of the life beyond. Judge Ware, who, for more than forty-four

years, presided over the District Court of the United States for the State of Maine, in the seat to which you have so worthily succeeded, died peacefully at his residence in this city, on Wednesday, the 10th of September inst., at half past eleven in the morning, in the ninety-second year of his age.

In announcing this event all sorrow and regret will be out of place. When a life endowed with rare physical and mental vigor, ennobled by worthy and patient labor, adorned and enriched by varied study and learning, dignified by simple and guileless manners ends, there is no occasion to mourn or deplore. Its ending is rather the fit occasion to sum up and contemplate its excellences, and admire its rare good fortune. His fearless and adventurous spirit, long before it was weakened by the infirmities that oppressed and beclouded it, had frequently testified his satisfaction with the full measure of years allotted to him, and had come to look upon life without regret, and upon death as a problem that fascinated his curiosity and invited his experience. Those of us, who were permitted to look upon the calm face after death had composed it to the grand and beautiful expression which belonged to its maturity, who saw how, from the placid brow and composed countenance, all traces of feebleness and pain had passed away, could but think more kindly of that dread agent, which, seeming to crush all our hopes, leaves on the blank face, before it begins to decay, the gleam and promise of a better life, just as the sun, after it has set, gilds the clouds and sky with its continued light. While we accept trustfully such an omen of his fate, we find how it typifies a process of *apotheosis*, by which the bowed frame and the briefly clouded mind give place in our memory and thought, to the dignified presence, and clear and capacious intellect strengthened and expanded by thought and learning, by which our revered friend will hereafter ever be remembered.

A life like Judge Ware's, so happily and nobly lived, so rich in substantial if not conspicuous benefits conferred upon society, a mind so well endowed with intellectual and moral culture, is of historic value, and deserves commemoration in a fitting biography. I know the fact, that he had been often urged to lay the proper foundation for such a work, by furnishing personal memoranda of the leading incidents of his life. Late in his old age, he seems partially to have complied with such a request; but his life was a contemplative, rather than an active one, and having few changes or events personal to himself to record, his unique and characteristic history, as told by himself, gives us only the processes by which his mind was trained, the relations which he recognized as connecting himself with God and the universe, and the growth of opinions, mainly theological, which his contemplation and study had compelled him to adopt. The proprieties of this occasion will allow me only to speak briefly of the work he has done in the world, and the traits of mental and moral excellence developed in doing it. He has given this description of his dominant mental passions:

"I had always a love of knowledge. This I believe was innate and instinctive. It had its origin in a natural curiosity, and was wholly independent of the consequences that flowed from it."

He had a quiet contempt for the prevalent taste among his competitors in scholarship, whose efforts seemed to be stimulated by the desire to obtain honors, and who had more thirst for the reputation and rewards of learning than they had for learning itself. He says, moreover:

"My taste and inclination led me more to grave and solid studies, that improved the understanding, than to the lighter graces of polite letters. An important fact, or a principle which is a mere generalization of facts, had always more charms for me than a mere expression of happy elegance."

To the shaping and strengthening of his mind, metaphysical studies largely contributed; in relation to this, he observes:

"Nothing contributes so much to sharpen the mind, and nothing to discover the weakness of an adverse argument on any subject, nothing to make nice distinctions and just discrimination, nothing to detect as well as practice sophistry; to comprise the whole in one word, nothing so well teaches us the use of language, whether employed to express, or as it sometimes is, to conceal our meaning, as the study of metaphysics."

But although he recognized the value of these studies as discipline, he complained that the knowledge they furnished was uncertain, and that the modern mind, after all its efforts, had been baffled by the same uncertainties and the same limitations that had arrested the researches of the ancient philosophers two thousand years ago. So he turned to mathematics as more attractive and solid ground, and in touching their fixed and certain data, laid his hand upon the laws and methods of the creation. To quote his own language:

"If there be any merit in the essays I have written, either miscellaneous or professional, or judicial opinions, in the selection and arrangement of the thought and matter, I have been more indebted to geometry than to all other studies. I think I may safely say this, when one of the greatest men ever bred in America, great at the bar, great on the bench and great in political movements (though this was the less seen by the public), a man who would be, rather than seem great,—said that whatever merits his arguments at the bar might have had, they were all derived from Euclid; and juries, to whom these arguments were addressed, familiarly said of him that other advocates were plausible, but Parsons made a case plain and intelligible. I never studied a subject so well, or understood a science so thoroughly, as the elementary principles of geometry, and none of my juvenile studies had so deep and permanent an influence on my habits of mind."

For a mind, whose leading characteristic is a love of knowledge, free of the ambition of distinction, and the meaner ambition of reward, strengthened by the severe and abstract processes of metaphysical and mathematical studies, one career naturally opens itself. It will seek truth—not in the department of man's material and animal life, but in those higher relations which subsist between man as a spirit, and the source from which he sprang, and the destiny to which he is to attain. So we are not surprised to hear Judge Ware confess, that favoring influences aided the natural bent of his genius, to invite him to enter upon the study of theology, and devote his life to the office of preaching. From this project, however, he was deterred by the perhaps unexpected results to which he arrived, in turning his scientific and severe methods of investigation, to the prevalent religious beliefs of his time. These results he perhaps wisely concluded would be a too great innovation upon the cherished convictions of the religious mind of New England, to justify him in publicly proclaiming them. He had no taste for controversy. Notoriety only annoyed him. A wise skepticism, rather than a dogmatic and arrogant assurance, and a thorough respect for the genuine convictions of thinkers who honestly differed from him, compelled him to turn away from his favorite studies, and to use them ever afterwards as the recreations and solace of a life devoted to adjusting upon far lower grounds, the controversies of men as to their natural rights and obligations. While these opinions of his may have well seemed heretical in the narrow prejudice which held New England sixty years ago, the expanded thought of later times have comprehended and embraced them within the limits of a *christian* charity and sympathy. For, after his severe and candid inquiry into the grounds of religious faith, his written confessions show that he held firmly to these conclusions; that the Universe proceeded from the hand of an intelligent Creator,

who holds and governs it in the interests of justice and goodness; that man is amenable to the law of right, which is equivalent to the will of God, and is destined to an existence beyond his earthly life, where his condition will depend upon the fruits of virtue he has been able to gather from the good and evil influences, in the midst of which he had lived; and that Christianity, whose essence is the doctrine of the Fatherhood of God, and the equality of man, and whose highest sanction of virtue is furnished in its most clearly stated doctrine of a future life, if not a supernatural and miraculous revelation, is a historical and providential development of the progressive religious attainment of man, the best, as it is the last fruit of his religious aspirations.

Turning regretfully away from these high subjects, literature seemed naturally open to him; but sixty years ago literature was not recognized in our country as a profession. His mind had been trained to dwell only in realities, to seek for truth more than for beauty, and to grasp substance rather than form. He disclaimed for himself ideality and a strong poetic fancy, and so what he called the "lighter and more ornamental graces of polite letters," had no attractions for him. In this, too, he must be considered to have judged himself too severely, for that very fondness for precise and unequivocal statement, that orderly and logical method, that candid appreciation of all adverse argument, supplied by his metaphysical and mathematical studies, aided as they were by familiar converse with the models of classic oratory and poetry, laid the foundation for a style of expression eloquent in its simplicity and perspicuity. The vividness of his personal and historical sketches, the clearness and picturesqueness of statement in his judicial reports of the facts and incidents upon which he bases his judgment, and the charm of language which, in his private conversation, often arrested the attention even of uneducated persons,

showed that he had mental qualities that would have rendered him conspicuous in literature.

So, steadily and without regret or misgiving, he turned his well furnished mind to the study of law. An appointment, never more fittingly made, placed him upon the bench of this Court, in a position that exempted him permanently from the cares of getting a livelihood, and preserved his pure and unsophisticated character, from those intrigues and ambitions, which work among our ablest public men such deplorable demoralization and deterioration. The field itself was sufficiently unpromising of anything but ease and obscurity. It was just the place for an indolent and superficial man to subside into routine and self assumption. What Judge Ware has done in this field, by putting genius and high intellect into his work, may now be seen in the published reports of his judgments,—important contributions to the splendid system of maritime jurisprudence, that regulates the commercial intercourse of civilized nations, and ever to be remembered as the best monuments of his fame.

The law of the sea he was called upon to pronounce, must be as liberal and comprehensive as its own compass and extent. The common law, whose maxims had been derived from the feudal system, a highly artificial and aristocratic form of society, would never serve to regulate and restrict a commerce, inviting the freest competition among the most daring and adventurous, nor could the codes or legal principles derived from the consent or custom of a single people, accommodate themselves to the notions of rectitude and fair dealing, recognized by an international comity. It was left to the enlightened sense of justice, to determine the natural principles of law applicable to each case as it arose. Each court was put upon its conscience to pronounce a decree that should accord with the universally accredited sense of justice, or else it would nowhere be respected as

the sentence of law. If local prejudice or patriotic feeling blinded its candor, it rightfully lost its authority.

At the time Judge Ware took his place upon the bench, the English precedents in admiralty were rare, and only partially applicable to this country, where we had given our Admiralty Courts a more liberal jurisdiction; and as to the precedents of other countries and treatises, though the work of men of great genius and learning, it must be remembered how soon they would become obsolete, by the expansion and transformation of commerce, through the discovery of new countries, the production of new materials, the invention of more powerful forces of propulsion, and the new commercial usages which would grow out of more frequent and rapid commercial intercommunication.

A capacious and well-poised mind to define, for new situations and new relations, the law of natural right, which should not only decide the case in controversy, but be an authority for like cases at home, and receive the respect and acquiescence of the courts of foreign nations, was what was required. For such an office, with such opportunities, the natural and acquired qualifications of Judge Ware were peculiarly adapted. The very taste that had inclined him to theological studies, made him a just and upright judge. The pure and ethical ideas, by which he had regulated his own life, the keen moral sense that defined in his soul so sharply the boundary between right and wrong, gave him a power of moral perception, able to detect under most plausible disguises, every form of oppression and fraud. His metaphysical discipline enabled him to see the weakness of an adverse argument on any subject, to make nice distinctions and just discriminations, and to detect sophistry, and he had learned from geometry how to "select and arrange," in his judicial opinions, "the thought and the matter." When to this was added an elegance of style, derived from his classical and general reading, we can

understand why the reports, which, when completed, will contain the judicial labors of his life, are everywhere held in such high estimation as authority by the Courts, and as attractive to the professional and general scholar.

There was another mental trait which peculiarly fitted him to be the vindicator of the wrongs and oppressions of seamen. Few men have more heartily believed in the idea of the natural equality of men. He refused to assume any artificial dignity. It was with difficulty that he conformed to the prescribed etiquette and decorum of his own court. It offended his simple tastes to assume any badge or drapery, or to take a place in any procession. He liked to come quietly and unheralded, and take his seat in Court, clothed only in the natural dignity of his own character and intellect; and if his seat was raised above the level of his friends, the officers of the Court and members of the bar, the exclusion and elevation seemed a constant annoyance to him. This democratic feeling crops out every where in what he has written. His comments upon history, though mainly dispassionate and critical, grow fervid with indignation at the oppressions and exactions which tyrants and rulers practiced upon the people; and his hearty attachment to Christianity seems largely due to its recognition of the brotherhood of man, and to the solace its high hopes offer to the sufferings and sorrows of the poor and down-trodden.

Assuming no artificial dignities for himself, he could not defer to any assumptions of rank among those to whom he dealt out justice. Different positions determined different scales of responsibility and duty, but these fairly considered, a man was a man, and below the rank and rights of a man he would never allow a human being to be placed, whatever might be his race or color, or however limited his intellect or education.

When at the end of a term of judicial service rare in the annals of any people, and unprecedented in ours, he resigned

his high office, this bar assembled in this Court to express a just appreciation of the long official service he had so ably performed. We are now assembled when the long life itself, so successful and happy beyond the common lot, is rounded to a measure of years seldom allotted to man, to do honor to his character and to give our testimony of his high worth, and to commend him as an example of rare excellence to the emulation of the generation of young men who are to succeed us. We may point to his, on the whole, happy old age, as a fit illustration of the noble language of Cicero :

"Aptissima omnino sunt arma senectutis artes exercitationes—que virtutum, quæ in omni ætate cultæ, quum diu multumque vixeris munificos efferunt fructus, non solum quia numquam deserunt, ne extremo quidem tempore ætatis—quamquam id quidem maximum est—verum etiam quia conscientia bene actæ vitæ multorumque bene factorum recordatio jucundissima est."

At the close of these remarks, M. M. Butler, Esq., rose to offer the resolutions of the bar, and said :

May it please your Honor :

Accompanying the announcement, which has just been made, in so fitting terms, of the decease of Judge Ware, I have been deputed by the Bar Association of Cumberland County, to present to this Honorable Court over which he so long and so worthily presided, the resolutions which have been unanimously adopted in view of the occasion, expressive of our veneration of the man, and our appreciation of his virtues and public services.

In discharging the duty assigned me, naught indeed can be added by any poor words of mine to the beautiful tribute—alike appreciative and discriminating—which has just been paid to his memory ; naught certainly should be taken away therefrom.

I am sure that our Brother Talbot has not in any degree over estimated the importance and influence of Judge Ware's judicial labors. The estimate which Judge Story put upon them, when he said that he regarded Judge Ware as one of the ablest and most learned, if not *the* ablest and most learned, of the then living Admiralty lawyers, was concurred in by the voice of contemporary assent, and has been confirmed by the later judgment of the Bar of this generation. Among the great lights, by which the paths of admiralty and maritime law have been illumined, his name will shine serene,—a star of the first magnitude. His recorded decisions, beautiful in structure, adorned with grace and resting on the solid foundations of principle, have raised an enduring monument to his fame. His services in the cause of enlightened jurisprudence have already conferred, and will continue to confer, so long as justice shall be dispensed, lasting benefits on mankind.

The allusions to Judge Ware as a scholar have been most happy. It was certainly not alone in professional learning that his attainments were remarkable. He cultivated almost the whole boundless field of human knowledge—metaphysics— theology—polite literature—the classics—modern languages—the sciences—mathematics. He was scholarly in all his tastes and habits. He was one of those deep, quiet, unobtrusive students, of which our country has more in number, I believe, than we get credit for across the Atlantic.

Any review of the life of Judge Ware would be incomplete without reference to him as a citizen and member of society. His participation—so far as was befitting his position—in the business enterprises of our city, his connection with our educational interests, his selection, at different periods of his life, as President of two different banking institutions, and as Director in another;—his identification with the growth of the public improvements of the State, as early President of one of our leading Rail

road Companies,—these attest at once that Judge Ware was no recluse, and the confidence which was reposed in him by the community.

He ever took a lively interest in public affairs. In early life, before his elevation to the bench, he wielded a most trenchant pen in the discussion of the important political questions of the day, and afterwards throughout his judicial life, he never ceased to feel, and manifest on proper occasions, his deep interest in all that pertained to the welfare of his beloved country, the State of his adoption and the city of his home. He was a good citizen, a pure patriot, a genuine lover of liberty, a true Democrat, in the higher and nobler sense of the word.

But we, especially the older members of our number, who have been brought into more intimate relation with him, would hold in remembrance with enduring regard, Judge Ware, not alone as a great jurist, a ripe scholar, and good citizen, but as the modest, genial, true-hearted man that he was—possessing a tenderness of nature almost feminine,—a simplicity of character almost childlike. In our intercourse with him none can recall an unkind act or a harsh word. No man had less occasion to repeat the beautiful prayer of the liturgy: “From hatred, envy and malice and all uncharitableness, Good Lord deliver us.”

After having gone in and out before us in his Judicial career for more than forty years, having passed beyond the extreme limit allotted by the scriptures to human existence—life’s labors faithfully performed, his earthly tasks fully accomplished—this righteous Judge, this great jurist, this pure-minded citizen, this excellent man has gone in fullness of time to his reward. Peace be with his ashes. May we not reverently inscribe over his grave :

“Cujus est solum, ejus est usque ad cœlum.”

May it please your Honor: I move that the resolutions

to which I have referred, and which, with your Honor's permission I will now read, may be received and entered upon the records of the Court.

Resolved, That we, the members of the Cumberland County Bar, deem the recent death of the Honorable Ashur Ware, formerly, and for more than two score years, Judge of the District Court of the United States for the District of Maine, an appropriate occasion for us, who enjoyed with him the kindest and most friendly relations, both professional and personal, to pay our affectionate tribute of respect to his memory, and to testify our grateful appreciation of his virtues and public service.

Resolved, That the eminence of Judge Ware, in those branches of jurisprudence to which he devoted the labors of his life, has been so universally recognized, as not to need commemoration at our hands. But now that he has gone from us, we would fain give expression to our renewed sense of the importance and influence of his judicial labors, which have left so lasting an impression on the jurisprudence of his times, and our increased admiration of those luminous and erudite judgments, recorded in the reports which bear his name, which for sound learning, depth of research, logical acumen, felicity of illustration, and mastery of the English language, in a style of simple grace and beauty, are models of their kind in judicial literature, and have served no mere temporary purposes, but have become, to a great extent, the foundation of the practice and administration of admiralty and maritime law throughout the land, and precedents for future jurists forever.

Resolved, That as members of the Bar we shall ever cherish in affectionate veneration the recollection of the modesty, simplicity and courtesy that distinguished Judge Ware's social and official intercourse with us: of the cordial affability that was always ready to communicate to us his varied stores of thought and learning, and of the many virtues which endeared him to the community in which he lived.

Resolved, That a copy of these resolutions be communicated to the family of the deceased, and that the same be presented to

the Court over which he has so long presided, with a request that they be entered of record.

Hon. Nathan Webb, United States District Attorney, seconded the resolutions, and said :

May it please your Honor :

In rising to second the resolutions of respect to the memory of Judge Ware, which have now been offered by the Cumberland Bar Association, I can not but feel regret that I never enjoyed to any considerable extent his personal acquaintance, and am consequently unable, out of my own experience, to add anything to the tribute of affection for the man, contained in this expression of the bar. On every side are met those, who for many years associated with him on terms of friendly intimacy. All unite in their testimony to the kindness of his nature, his purity and simplicity of character, his accurate scholarship and extensive and varied attainments. Companionship with him they esteem among their most valued opportunities.

Those of us, who knew him only in his judicial relations, recognize the fruits of those traits of character, and of his thorough and various culture in his official life and service.

Whoever studies the published opinions of Judge Ware will not fail to be impressed with the clearness of his intellectual perceptions, the precision and order of his statements, the rigor of his logic, the fullness of his research, the grace of his style, and his conscientious zeal to discern and to uphold truth and justice. Those opinions are widely known and valued: they have been known and valued, and held in ever increasing honor since they were promulgated.

It is not easy for us, who have pursued our researches in those branches of law in which he was so illustrious, to measure the sum of our obligation to his labors under the guidance of which we walk. Neither is the toil of those,

who have come after him, and walk in the paths he has cleared, to be compared with his task in making those paths plain and easy.

While he diligently devoted his powers to those pursuits appropriate to his position as a judge, he never lost his relish for the studies of his earlier years, but throughout his long life, found leisure to gratify his love of literature and science. He ever turned with delight to the classics, of which, in his prime, he had been a critical student and an ardent lover. He did not therefore become indifferent to the interests of his own days, but was a constant and thoughtful observer of men and events, often with his pen giving important counsel and assistance in securing a wise direction to affairs.

Remembering him, and the history of his life, we may account him happy, as well in the number of his years, as in the experiences they brought, and for ourselves, to whom he was so long spared, and who have the benefit of his bright example, we may, as we turn to our duties, reverently say :

“ Why weep we then for him, who having won
The bound of man's appointed years, at last,
Life's blessings all enjoyed, life's labors done,
Serenely to his final rest has passed ;
While the soft memory of his virtues, yet
Linger like twilight hues, when the bright sun is set.”

Hon. John Mussey, for many years Clerk of the Circuit and District Courts, while Judge Ware presided in the latter, arose, and with much feeling said :

May it please your Honor :

Having long known the distinguished Jurist, whose recent decease is the occasion of this meeting of the Brethren, it seems right that I should say a few words about one, with whom for a long period I was so intimately connected.

The high stand he occupied for many years as the exponent

of Maritime and Admiralty Law, is well known to you and the community at large.

When he took the bench of the United States District Court of Maine, in 1822, the rights and duties of seamen, the authority and responsibility of officers and owners of our merchant marine, were alike in great measure unknown and unrecognized by both the employers and employees. The clear head of the Judge soon evinced the determination and ability to bring order out of confusion and misconception. At first, many of his rulings clashed with the prejudices of owners and masters, but as case after case came before him, the mists of prejudice and shortsightedness lifted and dispersed. Soon those of the community interested looked up to him in confidence, that good common sense—a just appreciation of their needs, would be furnished by Judge Ware as opportunity offered, and they were not disappointed. The most violent opponents to his teachings gave way, and all felt, if they did not acknowledge the fact, that he was truly a public benefactor; that law as delivered by him was sound, reasonable, well-grounded, and would stand the severest scrutiny; and so it proved to be, by the voluntary acknowledgment of many eminent jurists in the Union. A few words of his social and home life. Modest and unobtrusive, he was ever ready to aid and encourage the efforts of the young practitioner in this Court. No one, I think, ever left his Chambers without being instructed and pleased. To myself, the recollections of the past are most grateful. His manner was always simple, unaffected and childlike, and his heart full of the milk of human kindness. During a period of more than twenty-six years of official intimacy, never a hasty, cross or angry word ruffled our friendship. A kinder or more constant friend and companion on the journey of life, I never had nor could desire to have. Such was Ashur Ware as he ever appeared to me.

The following is the response of Judge Fox :

Gentlemen of the Bar :

Judge Ware was appointed District Judge of Maine, in February, 1822, and he continued in the discharge of the duties of the office, until the Spring of 1866, his resignation taking effect in May, I believe, being then compelled by the infirmities of years to withdraw from this place which he had, by his learning and ability so ably filled for more than forty-four years. Although eight years have not elapsed since his retirement, I think a large proportion of the members of the bar now present, never enjoyed the satisfaction of practicing in the Court whilst he here presided, and many of those who were then with us, distinguished in their high professional positions have since passed away from us. The remembrance of the Fessendens, Evans, Deblois, Barnes and others is still vivid with many of us, and at last, this good old Judge, so endeared to all who ever held personal intercourse with him, has gone to his reward, after years of feebleness and suffering, and it is just and due to his memory that the records of this Court should, so long as they exist, transmit to those, who shall follow us, the expression of the great respect and attachment entertained for him by this bar.

Having, for nearly thirty years, practiced before Judge Ware, I trust that in the presence of so many of the bar who have not been thus favored, I may be excused for referring briefly to the manner in which he discharged the duties of his position, and in acknowledging the heavy indebtedment we are under to him for his studious labors in the admiralty law, and the information he has imparted to us upon this branch of jurisprudence.

In 1822, Peters' and Bee's were the only reports of decisions in the District Courts of the United States, and most of the opinions contained in these volumes were quite brief and meagre of authority, so that Judge Ware, in almost every question of admiralty and maritime law, was compelled to depend on his own researches into the ancient

laws of the sea and maritime codes, and his own wisdom and judgment for his conclusions, as the cases were presented before him for decision. Fortunately for him, his practice in the Courts of common law had been of but little moment. His mind was not trammelled by the harsh and unyielding rules of Lord Coke and his followers, and being naturally of a broad catholic tendency, it was with the greatest satisfaction that he found himself at full liberty to adopt, modify, and apply the pliant rules of equity and admiralty, as the law of his Court, according to the circumstances of each particular case. The strict rules of the law of evidence did not always receive his sanction and approval, as some of us may well recollect his readiness to hear almost all that a witness might press into the case, although much of the statement would not have been received in a Court of common law.

Judge Ware's literary acquirements were second to no man's in this District. He was conversant with the Greek and Latin, as well as with the French languages, and could thus investigate and examine for himself their authorities without depending on the assistance of others. His extensive acquaintance with the Roman law and the various French writers on commercial and admiralty law, is manifest in almost every one of his opinions, which we now possess. He most thoroughly enjoyed the investigation of questions of admiralty and maritime law, making the most diligent search and examination among the rules and sea laws of the ancient marts of commerce, and he pursued his studies and explorations until he was complete master of the subject, so that nothing remained for him, but to present his conclusions in that clear and beautiful manner which is so distinguishing a characteristic of all his opinions, and in which he has never been surpassed, either at home or abroad. Quite often his opinion was not restricted to a mere determination of the rights of the parties in the cause, but, con-

scious of the importance of his labors, and of the benefit to be derived from the knowledge he would thus impart, he made his opinion a most elaborate and finished exposition of the great principles of admiralty and maritime law involved in the matter in controversy, in relation to which at that time, the entire profession was almost universally ignorant. So complete and thorough were his examinations, so convincing his judgments, that in many cases since his time, the most learned and eminent jurists have referred to them as conclusive authority on the questions he so well investigated, being convinced that their own researches would shed no new light upon a matter which had received the careful and diligent investigation of Judge Ware. His written opinions were deemed so valuable, both to the public and the profession, that they were generally made public through the press immediately on their announcement, and they at once were accorded by the entire profession, the very front rank in admiralty and maritime jurisprudence. In the year 1839, the first volume of his reports was published, followed by a second in 1849, and the demand for these works has been so great as to require a second edition of each of them.

A large number of treatises upon admiralty law, and volumes of decisions of various Courts of Admiralty, both in England and this country, have since that time issued from the press, but all, I believe, are under great obligations to Judge Ware, and no one can acquire a knowledge of admiralty law, without an intimate acquaintance with his decisions. It is quite extraordinary, the multiplicity of questions which he examined, and upon which we enjoy the fruits of his labors. Since I have occupied this chair, hardly a maritime question has been presented to me, in which I have not at once turned to his reports, and derived great assistance from them. In a large majority of the cases, I think I may truly say, I have found in his opinions principles there laid

down, applicable to the case I was investigating, and so clearly stated that my own labors were at an end, and nothing further remained for me but to acknowledge my obligations and recognize their authority. I believe no treatises or reports are now extant which are at this moment more useful to the profession or more frequently acknowledged as authority, or which can afford more knowledge and information than these reports. There is not a judge administering the admiralty law, either in this country or in England, who has not profited by the labors of Judge Ware and gratefully acknowledged the obligations thereby conferred. The debt due from us all to the profession, according to Lord Bacon, was more than paid by Judge Ware. It was not discharged by any depreciated currency, but was paid in full in pure coin, both principal and interest.

Judge Ware was of marked simplicity of character, and was always actuated by entire singleness of heart and purpose. The kindest and most friendly relations ever existed between him and the members of this bar. His intercourse with us was ever free and informal, never in the least pretentious; and it always was a pleasure to him, to assist us by his advice in relation to his own decisions, as well as to principles of law upon which we desired information; and I have very frequently in this manner received from him most valuable assistance which it would have been extremely difficult, if not impossible, to have procured from any other source. He had no favorites. Every one who appeared in his Court, whether young or old, was certain that all stood on an equality in his presence. With courtesy and the greatest patience he listened to the views which counsel saw fit to present, the manifest purpose of the judge being to obtain light, to aid him in his determination of the cause without regard to the source whence it was derived. No one ever took part in a trial before the judge, without becoming attracted to him, and feeling the highest respect

for him, as well for the kindness of heart ever exhibited to whatever counsel a party might select to advocate his rights, as for his diligent attention, for his acute wisdom and judgment, and the learning and research manifested in his elaborate opinions.

Many of the causes brought before a Court of Admiralty, such as claims for wages, torts, &c., are of small amount, and of such a nature that any protracted delay of judgment therein, is tantamount to a denial of justice. In this class of cases, the Court, under the conduct of Judge Ware, always sat "*velis levatis*." Most of these causes, were decided upon the conclusion of the arguments, and those which were retained for advisement, were at once examined, and an opinion prepared and announced in a very few days. The researches I have made do not indicate, that in any admiralty cause presented to him for decision, his opinion was delayed for more than thirty days, and generally it was announced the week succeeding the hearing.


Judge Ware was alike attentive and diligent in the discharge of his duties as a member of the Circuit Court for this District, always attending the sessions of that Court as long as his health would permit. He frequently presided at jury trials, but his enunciation was not clear and distinct, and his charges were not so fascinating and effective as those of his eminent associate, Mr. Justice Story, but his rulings and instructions were almost invariably sustained when presented for re-examination, and on one occasion I remember, against his own convictions, he having become satisfied that they were erroneous, whilst his associate was of opinion that they were strictly correct, his honesty of purpose leading him to insist on his ultimate opinion and for the reversal of his rulings at *Nisi Prius*—and no judge ever strove more firmly to correct what he believed to have been an error committed by himself, than did Judge Ware on this occasion.

In another cause he could not concur in an opinion prepared by Mr. Justice Story, and although no jurist ever existed whose opinion was, with Judge Ware, of so high authority as that of Judge Story, he felt obliged to prepare a dissenting judgment, which upon appeal to the Supreme Court received the sanction and approval of that tribunal.

For some time before his resignation, it was quite manifest to all, that the infirmities of old age were gathering around him. His hearing was so impaired that for a number of years he was under the necessity of taking his seat within the bar with the witnesses in close proximity, that he might understand their testimony. No one was so conscious of his weakness and infirmity as the Judge, and I know that his resignation would have been presented at a much earlier day, if he had not, with strict sense of justice, realized, that he had claims upon the public, after expending so many years in its service, which it had no right to expect him to surrender so long as he could attend to the duties of his office. A year or two since, some of you, believing it but a partial recompense for the benefit he had conferred upon the profession, as well as upon the whole mercantile community, endeavored to induce Congress to allow Judge Ware the advantages of the retiracy provisions, which have since been conferred upon the Judges of the Federal Courts. The House of Representatives almost unanimously acceded to the proposal, but it was defeated in the Senate.

This kind-hearted, learned and good judge has finished his labors on earth, and it only remains for us, who have been so profited thereby, and who have been so highly favored by his wisdom and learning, to testify our acknowledgment of our great obligations, by the open record in this tribunal, where he so long and so eminently presided, of our testimonial in respect and honor of his memory.

At the close of these remarks, the Court adjourned.







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